

REMARKS

Claim 1 has been amended. Claims 1-35 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Claim Objections:

The Examiner objected to claim 1 for reciting “the one or more advertisement.” Claim 1 has been amended to recite “the one or more advertisements.” Therefore, Applicants respectfully request withdrawal of the objection to claim 1.

Section 101 Rejection:

The Office Action rejected claims 1-19 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Applicants respectfully traverse this rejection for at least the following reasons.

In regard to claims 1-7 and 8-17, the Examiner asserts “the system recites peers, each defined in the specification as a process...Therefore, peers can be read as software modules, and the claims are directed to software systems and non-statutory.” Applicants respectfully traverse this rejection for at least the following reasons. Contrary to the Examiner’s assertion, claims 1-7 and claims 8-17 recite peer nodes, not “peers”. In addition, Applicants refer the Examiner to page 40, first paragraph, lines 4-7, which recites (emphasis added):

Network nodes (peers) of various kinds may join the peer-to-peer networking platform by implementing one or more of the platform’s protocols. A peer may be any networked device (e.g. sensor, phone, PDA, PC, server, supercomputer, etc.) that implements one or more of the core peer-to-peer platform protocols.

Further, the citation referred to by the Examiner on page 22 recites:

A peer may be anything with a digital heartbeat that supports the peer-to-peer platform core, including sensors, servers, PCs, computers up to and including supercomputers, PDAs, manufacturing and medical equipment,

phones and cellular phones. In order to interact with other peers (e.g. to form or join peer groups), the peer needs to be connected to some kind of network (wired or wireless), such as IP, Bluetooth, or Havi, among others.

Thus, Applicants' specification clearly defines a "peer" as statutory subject matter. Applicants thus respectfully request removal of the § 101 rejection of claims 1-7 and 8-17.

In regard to claims 18-19, the Examiner asserts that the claims recite "means for implementing some function. It is believed that these means are software means, since the claimed subject matter is related to peer-to-peer protocols (advertising and discovering). Therefore, the claims are directed to non-statutory subject matter." However, the elements of claims 18 and 19 are all expressed as means for performing a specified function. Applicants remind the Examiner that under 35 U.S.C. § 112, paragraph 6:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of underlying structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

Thus, by statutory definition, the means claim specifically includes structure, material, or acts in support thereof and cannot be construed as software *per se*.

In addition, Applicants refer the Examiner to the above response to the § 101 rejection of claims 1-17.

Therefore, for at least the reasons presented above, the § 101 rejection of claims 18 and 19 is improper and removal thereof is respectfully requested.

Section 112, First and Second Paragraph, Rejections:

The Examiner rejected claims 1, 3 and 12 under 35 U.S.C. § 112, second paragraph, as being indefinite.

In regard to claim 1, the Examiner asserts that it is “unclear whether [the peer node on line 4] corresponds to the publisher peer node or the at least one of the plurality of peer nodes.” Applicants respectfully traverse this rejection for at least the reason that it is clear from the language of the claims that the at least one of the plurality of peer nodes is the publisher peer node.

In further regard to claim 1, the Examiner asserts that “it is not clear what “each” refers to” on line 14. Applicants respectfully traverse this rejection because it is clear from the language of the limitation that “each” would refer to a peer node in the subset. However, in order to expedite prosecution, Applicants have amended claim 1 to recite “at least a subset of the plurality of peer nodes, wherein each peer node in the subset is configured to.”

Therefore, for at least the reasons presented above, Applicants respectfully request removal of the § 112 rejection of claim 1.

In regard to claim 12, the Examiner asserts “the cached contents” on line 3 lacks antecedent basis. Applicants respectfully traverse this rejection. Antecedent basis for “the cached contents” is clearly provided by “cache user-requestable contents” immediately preceding “the cached content”, as “the cached content” obviously refers to user-requestable contents that has been so cached by the primary content publisher peer node.

Therefore, for at least the reasons presented above, Applicants respectfully request removal of this § 112 rejection of claim 12.

The Examiner rejected claim 12 under 35 U.S.C. § 112, first paragraph as failing to comply with the written description embodiment. The Examiner asserts that the “claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art...” The Examiner requests that

Applicants “show support in the specification that discloses this limitation.” **However, the Examiner fails to identify which subject matter in the claim the Examiner believes is not described in the specification, and fails to point out what “limitation” the Examiner is referring to.** Therefore, the rejection is improper.

However, Applicants traverse the rejection for at least the following reasons. The subject matter of claim 12 is clearly described in the specification. For a primary content publisher peer node configured to cache user-requestable contents and publish the cached contents for access by other peer nodes on a network, see, for example, page 15, lines 2-3; also see Figures 34A-34B, 35 and 36 (peer 400A is the primary content publisher for content 402 / 402A; see, e.g., page 16 lines 22-23). For an edge content publisher peer node configured to receive a plurality of the user-requestable contents from the primary content publisher peer node, cache the received plurality of contents, and publish the received plurality of contents for access by the other peer nodes on the network, see, for example, page 16, lines 6-7 and lines 14-15; also see Figures 34A-34A-34B, 35 and 36 (peer 400b becomes an edge content publisher for content 402B received from primary content publisher 400A; see, e.g., page 17 lines 1-4). For wherein the edge content publisher peer node is logically closer to the other peer nodes on the network than the primary content publisher, see, e.g., page 15, lines 16-21; also see page 13, lines 4-10.

In regard to claim 12, the Examiner further asserts “it is vague why an edge publisher peer is closer to ‘other peer nodes’ than the primary publisher given that no information is provided for the other peer nodes.” Applicants respectfully traverse the assertion that “no information is provided for the other peer nodes.” Information is provided for the other peer nodes: if the edge content publisher peer node is logically closer to the other peer nodes than is the primary content publisher peer node, then the other peer nodes are obviously logically closer to the edge content publisher peer node than they are to the primary content publisher peer node. Contrary to the Examiner’s assertion, the claim is not at all vague as to “why” node A is logically closer to node B than it is to node C. Anyone of ordinary skill in the art would understand what the claims

language means. Further, the specification clearly defines what is meant by “logically closer”, for example at page 13, lines 4-10 and page 15, lines 16-21.

The Examiner further asserts “as best understood by the examiner, the invention is to locate a closest peer node, regardless for that peer node being a primary or an edge peer, to provide cached content.” Claim 12 is consistent with the Examiner’s understanding, with the distinction of locating a *logically* closest peer node. In the case of claim 12, the logically closest peer node to the other peer nodes recited in the claim happens to be the edge content publisher peer node and not the primary content publisher peer node.

Therefore, for at least the reasons presented above, Applicants respectfully request removal of this § 112 rejection of claim 12.

In regard to claim 3, the Examiner asserts that claim 3 recites “an additional content publisher”, and that there is “an additional content publisher” in claim 1, and that it is thus unclear whether these two are the same. Applicants strongly disagree. Claim 1 recites *wherein the requesting peer node is configured to cache the content and become an additional content publisher peer node for the content corresponding to the discovered advertisement*. Claim 3 recites *wherein the at least a subset of the plurality of peer nodes are each further configured to cache the particular content and become an additional content publisher peer node for the particular content*. It is clear from the language of the claims that the “additional content publisher peer node” in claim 1 refers to *the requesting peer node*, while the “additional content publisher peer node” in claim 3 refers to each of the at least a subset of the plurality of peer nodes. Moreover, it is clear from Applicants’ claim and specification that more than one peer node may be a content publisher peer node, and each peer node that becomes a content publisher peer node is of course an *additional* content publisher peer node.

Therefore, for at least the reasons presented above, Applicants respectfully request removal of this § 112 rejection of claim 3.

Section 103(a) Rejections:

The Examiner rejected claims 1, 6, 7, 20, 25-27 and 33-35 under 35 U.S.C. § 103(a) as being unpatentable over Burbeck et al. (U.S. Publication 2003/0217139) (hereinafter “Burbeck”) in view of Krishnan (“The JXTA Solution to P2P”). Applicants respectfully traverse this rejection for at least the reasons below.

In regard to claim 1, contrary to the Examiner’s assertion, the cited art fails to teach or suggest at least one of the plurality of peer nodes configured as a publisher peer node for a plurality of contents cached on the peer node, wherein each publisher peer node is configured to publish one or more advertisements on the network, wherein each advertisement corresponds to a specific one of the plurality of contents cached on the peer node, and wherein each advertisement includes information for requesting the specific corresponding content.

The Examiner cites Burbeck, paragraph [0023], lines 1-3, in support of the assertion that the cited art teaches *wherein each publisher peer node is configured to publish two or more advertisements on the network, wherein each advertisement corresponds to “the plurality of contents”* [the Examiner’s words] *cached on the peer node*. The citation states (emphasis added):

Preferably, as each node as it enters the network, it broadcasts a message to advertise (inter alia) what content the node holds.

This broadcast message corresponds to the “alive” message that a node broadcasts to advertise its presence on the network, e.g. at startup time (*see, e.g.*, paragraph [0111]). Thus, Burbeck’s nodes send a single “alive” message that 1) advertises the node’s presence; and 2) collectively advertises all content the node holds. In contrast, claim 1 recites that each publisher peer node publishes advertisements on the network, and each of the published advertisements corresponds to a specific one of the contents cached on the peer node. Thus, in claim 1 of the instant application, there is a one-to-one correspondence between an advertisement and a specific corresponding content, and each

advertisement is published on the network independently. Thus, each content is published independently in claim 1, in contrast to Burbeck in which one “alive” message is broadcast to advertise what content the node holds.

In the Action dated September 15, 2008, the Examiner relies on Krishnan to teach *wherein each advertisement corresponds to a specific one of the plurality of contents cached on the peer node, and wherein each advertisement includes information for requesting the specific corresponding content*. The Examiner asserts that Krishnan discloses “each advertisement corresponds to one codat”, citing page 5, codats and advertisements, and “therefore enables requesting a specific content.” However, Burbeck’s system clearly relies on a single “alive” message that a node broadcasts to advertise its presence and content on the network, e.g. at startup time (*see, e.g.*, paragraph [0023] and paragraph [0111]). Thus, Burbeck’s nodes purposefully send a single “alive” message that 1) advertises the node’s presence; and 2) collectively advertises all content the node holds. Modifying the teachings of Burbeck with the teachings of Krishnan to “enable requesting a specific content” in accordance with Krishnan, if possible, would clearly **change the principle of operation of Burbeck. Thus, the Examiner’s proposed combination of Burbeck and Krishnan is improper.** “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

In further regard to claim 1, the cited art fails to teach or suggest that to publish the one or more advertisements on the network the publisher peer node is configured to send the one or more advertisement to a rendezvous peer node, wherein the rendezvous peer node caches the one or more advertisements.

In the Action dated September 15, 2008, the Examiner relies upon Krishnan to teach this limitation. However, in Burbeck there is clearly no concept of a rendezvous peer that caches advertisements from a publisher peer. In addition, as noted above,

Burbeck relies on a single “alive” message that a node broadcasts to advertise its presence and content on the network, and modifying Burbeck with Krishnan in the manner proposed by the Examiner, if possible, would change the principle of operation of Burbeck, and therefore the proposed combination is improper. Furthermore, as noted, Burbeck relies on a single “alive” message that a node broadcasts to advertise its presence and content on the network, e.g. at startup time. Modifying Burbeck with Krishnan in the manner proposed by the Examiner to include “rendezvous nodes” that cache advertisements, if possible, would clearly change the principle of operation of Burbeck. **Thus, the Examiner’s proposed combination of Burbeck and Krishnan is improper.** “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

In further regard to claim 1, contrary to the Examiner’s assertion, the cited art fails to teach or suggest at least a subset of the plurality of peer nodes each configured to: discover published advertisements on the network; and request one or more specific contents each corresponding to one of the discovered advertisements in accordance with the information included in the respective advertisements.

The Examiner cites Burbeck, paragraph [0023], lines 3-5, which reads:

The technique may further comprise: requesting, by a node receiving the broadcast message, a particular content resource from the broadcasting node

Burbeck does not teach discovery of published advertisements on the network. Instead, Burbeck teaches that a node broadcasts a message to advertise what content the node holds. Another node may then receive the broadcast “alive” message. Simply receiving a broadcast message is not the same as a node discovering published advertisements. Moreover, as noted above, Burbeck’s system relies on this disclosed method.

In addition, the citation from Burbeck (paragraph [0023]) and Burbeck in general does not teach that a peer node is configured to request one or more specific contents each corresponding to one of the discovered advertisements in accordance with the information included in the respective advertisements. FIG. 11 of Burbeck is a flowchart of Burbeck's method of a node as requesting content from its peers, and FIG. 11 is described in the specification beginning at paragraph [0124]. Burbeck's method for requesting content is clearly and distinctly different than what is recited in claim 1 of the instant application. In the method, Burbeck does not teach that a node requests a specific content corresponding to a discovered advertisement in accordance with information included in that advertisement. **Specifically, Burbeck does not teach that a node requests a specific content from a particular node in accordance with information in an “alive” message, which the Examiner has equated to Applicants’ “advertisements”, received from that node.** Instead, Burbeck teaches in FIG. 11 and the accompanying discussion that a node sends or broadcasts a query request to multiple nodes or peers and waits for response messages to the query message (paragraphs [0124] – [0130]). The query request does not request the content, but instead requests nodes to respond that may be able to satisfy the query. The requesting node then processes meta-data from the response messages (paragraph [0131]), after which a “user” evaluates the meta-data from the collection of responding nodes to identify a peer that best satisfies the query. A request for the content is then sent to the identified peer.

In the Action dated September 15, 2008, the Examiner relies upon Krishnan to teach *at least a subset of the plurality of peer nodes, wherein each peer node in the subset is configured to discover published advertisements on the network from the rendezvous peer node by accessing the rendezvous peer node*. However, as noted above Burbeck teaches, and relies on, a distinctly different method. Burbeck specifically teaches in FIG. 11 and the accompanying discussion that a node sends or broadcasts a query request to multiple nodes or peers and waits for response messages to the query message (paragraphs [0124] – [0130]). The query request does not request the content, but instead requests nodes to respond that may be able to satisfy the query. The requesting node then

processes meta-data from the response messages (paragraph [0131]), after which a “user” evaluates the meta-data from the collection of responding nodes to identify a peer that best satisfies the query. A request for the content is then sent to the identified peer. Modifying Burbeck with Krishnan in the manner proposed by the Examiner to include “rendezvous nodes” as recited in claim 1, if possible, would clearly change the principle of operation of Burbeck. **Thus, the Examiner’s proposed combination of Burbeck and Krishnan is improper.** “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

Furthermore, the Examiner has not stated a proper reason to combine the teachings of the cited art. The Examiner asserts that it would have been obvious to combine the teachings of Krishnan with the teachings of Burbeck “to discover advertisements through rendezvous nodes so that service or content requests can be resolved efficiently.” However, as noted above, modifying Burbeck with Krishnan in the manner proposed by the Examiner to include “rendezvous nodes” as recited in claim 1, if possible, would clearly change the principle of operation of Burbeck. Thus, the Examiner’s proposed combination of Burbeck and Krishnan is improper. “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Thus, one of ordinary skill would not have combined the teachings of Krishnan with the teachings of Burbeck in the manner proposed by the Examiner. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness. Moreover, the Examiner’s stated reason to combine the reference is merely conclusory.

Thus, for at least the reasons presented above, the rejection of claim 1 is not supported by the cited art and removal thereof is respectfully requested.

In regard to claim 20, the Examiner’s assertion that Burbeck discloses *one of the other peer nodes ...publishing the received particular content for access by the other peer nodes on the network* is not supported by the Examiner’s citation and argument. The Examiner cites paragraph [0118], and asserts “receiving peers further broadcasting advertisements to other peers.” Paragraph [0118] describes a node’s initial “alive” message being propagated on a network, and “alive” messages from other nodes being responsively returned to the broadcasting node so that the new node (upon entering the network) can “dynamically learn the P2P network topology.” The paragraph does not describe, and is not at all directed at or even suggestive of, one of the other peer nodes receiving contents from a primary content publisher peer node and responsively publishing the received contents for access by the other peers nodes.

Moreover, nowhere in the citation or elsewhere does Burbeck teach or suggest a node publishing a received particular content for access by other peer nodes.

In the Action dated September 15, 2008, the Examiner relies upon Krishnan to teach “a plurality of separately user-requestable contents”, citing page 5, codats, or contents; and advertisements, each advertisement message corresponds to a particular content. However, as noted above in regard to claim 1, modifying Burbeck with Krishnan in the manner proposed by the Examiner, if possible, would clearly change the principle of operation of Burbeck. Thus, the Examiner’s proposed combination of Burbeck and Krishnan is improper. “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Thus, one of ordinary skill would not have combined the teachings of Krishnan with the teachings of Burbeck in the manner proposed by the Examiner. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness. Moreover, the Examiner’s stated reason to combine the reference is merely conclusory.

Thus, for at least the reasons presented above, the rejection of claim 20 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks as those above regarding claim 20 also apply to claim 28.

The Examiner rejected claims 12-14 under 35 U.S.C. § 103(a) as being unpatentable over Burbeck in view of Leber, et al. (U.S. Publication 2003/0233455) (hereinafter “Leber”). Applicants respectfully traverse this rejection for at least the reasons below.

In regard to claim 12, contrary to the Examiner’s assertion, the cited art does not disclose an edge content publisher peer node configured to receive the user-requestable contents from the primary content publisher peer node and cache the received contents.

The Examiner cites Burbeck, paragraph [0023], lines 8-10. Paragraph [0023] states:

The technique may further comprise: requesting, by a node receiving the broadcast message, a particular content resource from the broadcasting node; receiving the requested content resource at the requesting node, along with a reference to the holding node’s directed graph for that content resource; storing the received content resource in a local content repository; and storing a local copy of the directed graph for the received content resource.

In the citation, Burbeck is describing a “technique” that comprises a node requesting a particular content resource from a broadcasting node, receiving the particular content resource, and storing the particular content resource. In contrast, claim 12 recites an edge content publisher node receiving a plurality of contents from a primary content publisher peer node and caching the received plurality of contents. Claim 12 recites receiving a plurality of contents, i.e. more than one content, while the citation from Burbeck is describing requesting and receiving a single, particular content resource.

Further in regard to claim 12, the cited art does not teach or suggest that the edge content publisher peer node is logically closer to the other peer nodes on the network than the primary content publisher.

The Examiner asserts “requesting peer caches received content is an edge peer node” (citing paragraph [0023]). However, nowhere does Burbeck state that that the edge content publisher peer node is logically closer to the other peer nodes on the network than the primary content publisher.

In the Action dated September 15, 2008, the Examiner relies upon Leber to teach *wherein the edge content publisher peer node is logically closer to the other peer nodes on the network than the primary content publisher*. The Examiner cites Leber, Abstract, Fig. 6, steps 615-640, and paragraph [0098]. Leber discloses, in the Abstract (emphasis added):

The method involves sending a request for a file to the server computer; receiving back from the server an authentication code and a list of peer client computers that have the requested file or part of it; sending a request for the file to a subset of peer clients that yield the fastest download rate; receiving file data back from this subset of peer clients; reassembling the requested file using data sent by the peer clients; and checking the integrity and completeness of the reconstructed file by comparing a computed checksum of said reconstructed file with the authentication code.

The above description from Leber’s Abstract is consistent with Fig. 6 and the description thereof found in paragraphs [0096] through [0106]. From the above, Leber does not disclose an edge content publisher peer node that is logically closer to the other peer nodes on the network than the primary content publisher. Instead, Leber discloses receiving file data from a plurality of peer clients. In paragraph [0033], Leber actually states (emphasis added):

Additionally, the present invention eliminates the requirement for a user to download an entire file from a single source and instead provides a system and a method for the transfer of multiple parts of a file from a plurality of peer client computers.

From the above, Leber actually appears to teach away from a content stored on a single source (e.g., Burbeck's "broadcasting node" or "requesting/receiving node" in paragraph [0023] or an edge content publisher peer node as recited in claim 12), instead teaching that portions of a content is distributed among a plurality of peer client computers, and to thus *teach away* from what Burbeck teaches and from and edge content publisher peer node as recited in claim 12.

In further regard to claim 12, the Examiner's assertion that Burbeck discloses *an edge content publisher peer node configured to...publish the received contents for access by the other peer nodes on the network* is not supported by the Examiner's citation and argument. The Examiner cites paragraph [0118], and asserts "receiving peers further broadcasting advertisements to other peers." Paragraph [0118] describes a node's initial "alive" message being propagated on a network, and "alive" messages from other nodes being responsively returned to the broadcasting node so that the new node (upon entering the network) can "dynamically learn the P2P network topology." The paragraph does not describe, and is not at all directed at or even suggestive of, an edge content publisher peer node receiving contents from a primary content publisher peer node and responsively publishing the received contents.

In addition, modifying Burbeck with Leber's disclosed method of receiving file data from a plurality of peer clients in the manner proposed by the Examiner, if possible, would clearly change the principle of operation of Burbeck. Thus, the Examiner's proposed combination of Burbeck and Leber is improper. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Thus, one of ordinary skill would not have combined the teachings of Leber with the teachings of Burbeck in the manner proposed by the Examiner. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness. Moreover, the Examiner's stated reason to combine the reference is merely conclusory.

Thus, for at least the reasons presented above, the rejection of claim 12 is not supported by the cited art and removal thereof is respectfully requested.

The Examiner rejected claims 2-5, 8-11, 18, 19, 21-23 and 29-31 under 35 U.S.C. § 103(a) as being unpatentable over Burbeck in view of Krishnan and Leber. Applicants respectfully traverse this rejection for at least the reasons below.

In regard to claim 8, in the Action dated September 15, 2008, the Examiner relies upon Krishnan to teach “a plurality of separately user-requestable contents”, citing page 5, codats, or contents; and advertisements, each advertisement message corresponds to a particular content. However, as noted above in regard to claim 1, modifying Burbeck with Krishnan in the manner proposed by the Examiner, if possible, would clearly change the principle of operation of Burbeck. Thus, the Examiner’s proposed combination of Burbeck and Krishnan is improper. “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Thus, one of ordinary skill would not have combined the teachings of Krishnan with the teachings of Burbeck in the manner proposed by the Examiner. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness. Moreover, the Examiner’s stated reason to combine the reference is merely conclusory.

In further regard to claim 8, the Examiner relies upon Leber to teach *receive the particular content from a logically nearest content publisher peer node of the plurality of content publisher peer nodes on the network, wherein a logically nearest peer node is a peer node to which communications over the network take the least time*. The Examiner cites Leber, Abstract, Fig. 6, steps 615-640, and paragraph [0098]. Leber discloses, in the Abstract (emphasis added):

The method involves sending a request for a file to the server computer; receiving back from the server an authentication code and a list of peer client computers that have the requested file or part of it; sending a request

for the file to a subset of peer clients that yield the fastest download rate; receiving file data back from this subset of peer clients; reassembling the requested file using data sent by the peer clients; and checking the integrity and completeness of the reconstructed file by comparing a computed checksum of said reconstructed file with the authentication code.

The above description from Leber's Abstract is consistent with Fig. 6 and the description thereof found in paragraphs [0096] through [0106]. From the above, Leber does not disclose receiving the particular content from a logically nearest content publisher peer node of the plurality of content publisher peer nodes on the network. Instead, Leber discloses receiving file data from a plurality of peer clients. In paragraph [0033], Leber actually states (emphasis added):

Additionally, the present invention eliminates the requirement for a user to download an entire file from a single source and instead provides a system and a method for the transfer of multiple parts of a file from a plurality of peer client computers.

From the above, Leber actually appears to teach away from downloading “an entire file” from a single source, and to thus teach away from what Burbeck teaches and from what is recited in claim 8.

Furthermore, Leber's disclosed method requires sending a request for a file to a server computer. However, Burbeck's method for requesting content is incompatible with what Leber describes, and does not employ sending a request to a server at any point. In his method, Burbeck does not teach that a node sends a request for a file to a server computer, receiving back from the server an authentication code and a list of peer client computers that have the requested file or part of it. Instead, Burbeck teaches in FIG. 11 and the accompanying discussion that a node must send or broadcast a query request to multiple nodes or peers and waits for response messages to the query message (paragraphs [0124] – [0130]). The query request does not request the content, but instead requests nodes to respond that may be able to satisfy the query. The requesting node then processes meta-data from the response messages (paragraph [0131]), after which a “user”

evaluates the meta-data from the collection of responding nodes to identify a single peer that best satisfies the query. A request for the content is then sent to the identified peer.

Furthermore, Burbeck discloses, in paragraph [0138], “In addition, the traversal path will be extended to include the current node as the latest target node in the directed graph (that is, by creating a new <arc> element of the form shown at 735 in FIG. 7).” Burbeck, as previously mentioned, discloses a directed graph for tracking the traversal of content resources across nodes. It is not at all clear how Leber’s system and a method for the transfer of multiple parts of a file from a plurality of peer client computers would or could be combined with Burbeck’s system while maintaining Burbeck’s disclosed elements, e.g. the directed graph for tracking the traversal of content resources across nodes.

Furthermore, the Examiner has not stated a proper reason to combine the teachings of the cited art. The Examiner asserts that it would have been obvious to combine the teachings of Burbeck-Krishnan with the teachings of Leber “to provide peer-to-peer services from the peer where the service is available with the best QoS in order to save unnecessary long distance communications costs.” The Examiner’s reason is not found in either of the cited references, nor in any other evidence of record. The Examiner’s reason is not supported by any evidence of record and can thus only be found in hindsight. **Moreover, the references actually teach away from their combination.** First, Leber states that Leber’s invention “eliminates the requirement for a user to download an entire file from a single source and instead provides a system and a method for the transfer of multiple parts of a file from a plurality of peer client computers,” while Burbeck’s system, e.g. the directed graph for tracking the traversal of content resources across nodes, appears to rely on a content resource moving from just one node to another node. In addition, Leber’s system relies on a server computer in requesting content, while Burbeck’s system clearly and purposefully does not rely on a server computer system in requesting content. “It is improper to combine references where the references teach away from their combination.” *In re Grasselli*, 218 USPQ 769, 779 (Fed. Cir. 1983). In addition, combining Leber with Burbeck-Krishnan would appear to make

Burbeck's "Methods, systems, and computer program products for tracking content in a transient peer-to-peer networking environment" unworkable as disclosed and intended. "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Furthermore, combining Leber with Burbeck-Krishnan would appear to drastically change the principle of operation of Burbeck's disclosed system. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Thus, one of ordinary skill would not have combined the teachings of Burbeck-Krishnan with the teachings of Leber in the manner proposed by the Examiner. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness.

Thus, for at least the reasons presented above, the rejection of claim 8 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks as those above regarding claim 8 also apply to claim 18.

The Examiner rejected claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Burbeck, Leber, and further in view of Saulpaugh, et al. (U.S. Publication 2004/0122903) (hereinafter "Saulpaugh"). Since the rejection has been shown to be unsupported for the independent claims, a further discussion of these rejections is not necessary at this time.

The Examiner rejected claims 24 and 32 under 35 U.S.C. § 103(a) as being unpatentable over Burbeck, Krishnan, and further in view of Saulpaugh. Since the rejection has been shown to be unsupported for the independent claims, a further discussion of these rejections is not necessary at this time.

Applicants also assert that the rejection of numerous ones of the dependent claims is further unsupported by the cited art. However, since the rejections have been shown to be unsupported for the independent claims, a further discussion of the dependent claims is not necessary at this time.

CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-08300/RCK.

Respectfully submitted,

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